

1 (Whereupon, the following
2 proceedings were not of a
3 confidential nature and had in
4 open court.)

5 BY MS. SODERNA:

6 Q You testified in your direct testimony at 2
7 and 3 that within your -- I'm sorry. Strike that.

8 MR. McMANAMAN: Do you want a minute?

9 MS. SODERNA: No, I'm good. Thank you. I'm
10 getting a little tired.

11 BY MS. SODERNA:

12 Q So I'd like to talk now about the
13 verification process.

14 And you briefly discuss it and you
15 mentioned it as one of the methods that you believe
16 contributes to validly formed contracts; right?

17 A Yes.

18 Q And in addition to the actual contract --
19 I'm sorry. The first thing your sales agent does
20 after making a sale is call the verification company
21 who is now a third party; is that right?

22 A Yes.

1 Q And when the sales agent is talking to the
2 verification agent, they get what's called a Fixed
3 Price Reservation Code; is that correct?

4 A Correct.

5 Q Or FPRC.

6 And that code is how you track that
7 sale; is that right?

8 A I don't know if that's the only way how we
9 track the sale or if that's the way we track it.
10 Sorry, I can't --

11 Q Is that what is used to determine, like,
12 the commission payouts?

13 A No.

14 Q Okay. It's just to assign a number to that
15 customer's contract?

16 A No.

17 Q What is it used for?

18 A It's used to verify that a verification
19 call did take place. It's a confirmation that a call
20 took place.

21 Q Okay. So just for recordkeeping purposes?

22 A Yes, and it's used for other reasons. But

1 I don't recall exactly. But I do know that that
2 number is pretty important and it's used for other
3 reasons.

4 Q But you don't know why it's important?

5 A It's for tracking purposes as well, but I
6 don't know if that's the sole -- I don't think that's
7 the sole reason why it's used for tracking of sales.

8 Q And during the verification call, the sales
9 agent is present the entire time; is that correct?

10 A Yes.

11 Q Along with the customer who was also there;
12 is that right?

13 A Yes.

14 Q And if the contractor fails to make a
15 verification call and doesn't get the FPRC at the
16 point of sale, the Company then conducts an outbound
17 verification call at some point after the sale; is
18 that right?

19 A Right.

20 Q And is it accurate to say that the
21 Company's sales agents are heavily encouraged by the
22 Company to get the FPRC at the time of sale?

1 A Absolutely.

2 Q And, in fact, the Company stated in its
3 response to CUB Data Request 6.24 that the actual
4 rate of outbound verification calls for most of 2008
5 was under 1 percent. Would you agree with that?

6 A If that's what was said. I'm not familiar
7 with the percentage.

8 JUDGE GILBERT: Let's stop for just a moment.
9 Go off the record.

10 (Whereupon, a discussion was had
11 off the record.)

12 JUDGE GILBERT: We can go back on the record.

13 BY MS. SODERNA:

14 Q So along the lines of the Company's
15 response that I just discussed regarding outbound
16 verification calls, I'm going to show you the
17 Company's response to CUB 6.24. It's in the middle
18 of the page, which I will mark as CUB
19 Cross-Exhibit 7.

20 JUDGE GILBERT: Is it a confidential exhibit?

21 MS. SODERNA: No.

22

1 (Whereupon, CUB Cross-Exhibit
2 No. 7 was marked for
3 identification.)
4 (Whereupon, a discussion was had
5 off the record.)
6 JUDGE GILBERT: Back on.
7 BY MS. SODERNA:
8 Q Did you have a chance to review the
9 Company's response to CUB 6.24?
10 A Yes.
11 Q And would you agree for the most part in
12 2008 the actual rate of outbound verification calls
13 was under 1 percent?
14 A Yes.
15 Q And in its supplemental response to CUB
16 Data Request 2.24 regarding the Company's
17 documentation of customer complaints, the Company
18 provided an internal memorandum from Richard
19 Teixeira --
20 MS. SODERNA: Am I saying that right? Is that
21 it?
22

1 BY MS. SODERNA:

2 Q -- to the Company's regional distributors
3 and others. Are you familiar with that memo?

4 A Can you restate that. Sorry.

5 Q Sorry. So I didn't hear your answer.
6 Did you recall a memo from Richard
7 Teixeira regarding verification procedures?

8 A No, I don't.

9 Q Strike that. I didn't even give you a
10 reference. Of course you wouldn't. I'm sorry. I
11 have the wrong documents. But I think I can get to
12 where we need to go just by asking you some
13 questions.

14 The Company has a strong preference,
15 like we discussed, for getting a Fixed Price
16 Reservation Code at the time of sale; right?

17 A Right.

18 Q And that's because of -- absent the Fixed
19 Price Reservation Code you could -- it could result
20 in a missed reacclimation. Is that possible?

21 A What do you mean? Sorry.

22 Q That is, it's possible that the customer

1 would not then verify the sale at a later point in
2 time; right?

3 A Sure. It's possible.

4 Q And, in fact, isn't it likely, which is why
5 the Company has a strong preference for getting a
6 Fixed Price Reservation Code at the time of sale?

7 A No.

8 Q It's not likely?

9 A No, I wouldn't say -- we don't push for
10 verification calls at the door because it's likely we
11 won't get the verification call after the visit.

12 Q Okay. So there are other reasons the
13 company wants the Fixed Price Reservation Code, but
14 you just don't know what they are?

15 A Right.

16 Q So I'll move on regarding some specific
17 verification calls.

18 You testified in your rebuttal
19 testimony at Page 5 that you are familiar with former
20 U.S. Energy's customer Catherine Vargas; is that
21 right?

22 A Right.

1 Q And subject to check, would you agree that
2 Catherine Vargas, her alleged contract was dated
3 January 16th, 2008?

4 A Subject to check, if that's what the
5 contract stated, then...

6 Q Okay. And do you recall that the sales
7 agent that claimed the sale was Franklin Gray; is
8 that right?

9 A I do recall, yes.

10 Q Do you know how long Franklin Gray worked
11 with the Company before that time?

12 A I don't recall.

13 Q And you -- your department, the CCR
14 Department received the allegation from Miss Vargas
15 in February 2008, or at least that's your
16 recollection of the testimony; is that right?

17 A Correct.

18 Q And you said that Mr. Franklin Gray was
19 terminated after investigation and Miss Vargas's
20 allegation demonstrated to you that wrongdoing had
21 possibly occurred; is that right?

22 A Correct.

1 Q But you agree, wouldn't you -- your
2 investigation determined, didn't it, that Miss Vargas
3 did not, in fact, sign that contract?

4 A Correct.

5 Q And you determined that just by examining
6 the contract itself, did you -- I'm sorry. Did you
7 get an example of Miss Vargas's handwriting to
8 compare the contract to?

9 A No, not that I recall.

10 Q How did you know that the contract had been
11 forged?

12 A In my testimony I did not say that the
13 contract was forged. What I said was that through
14 our experience suggested wrongdoing occurred. So
15 from what I recall I did not review the contract in
16 comparison with any other signature specimen. Our
17 findings was not that the contract was forged, not
18 that I remember.

19 Q Did you in your investigation review the
20 verification tape of Miss Vargas?

21 A From whatever call that was reviewed.

22 Q By you or by someone under your direction?

1 A By someone under my direction.

2 MS. SODERNA: At this time I'd like to play the
3 recording of Miss Vargas's verification call, which
4 was provided to CUB in response to CUB 5.01, which
5 has been duplicated on CDs, for the record. And we
6 also have transcripts of the recording for the
7 record. But I am not entirely sure how to present
8 this. I can circulate the transcripts now so that
9 you have the benefit of the transcript. Would that
10 work?

11 And then in terms of labeling this a
12 cross-exhibit it would be CUB Cross-Exhibit 8.
13 Should I designate the CD as another exhibit number?

14 JUDGE GILBERT: Yeah, let's use a number and a
15 letter. Let's break this into parts. Are you using
16 two parts or three here?

17 MS. SODERNA: Two. There's just a CD and a --

18 JUDGE GILBERT: The transcript of the call is
19 designated CUB Cross-Exhibit 8. And I note that the
20 final page contains a certification from a court
21 reporter concerning the transcript itself. Okay. So
22 that's 8 and there's a CD as well.

1 And are you going to offer that for
2 the record?

3 MS. SODERNA: Yes. Should it be 8CD?

4 JUDGE GILBERT: No, just make it 8A.

5 (Whereupon, CUB Cross-Exhibit
6 Nos. 8 and 8A were marked for
7 identification.)

8 JUDGE GILBERT: Let's go off the record for a
9 moment.

10 (Whereupon, a discussion was had
11 off the record.)

12 JUDGE GILBERT: Back on the record.

13 CUB Cross 8 is a transcript of the
14 recording. CUB Cross 8A is a CD, which is an audio
15 recording itself. Correct?

16 MS. SODERNA: Yes.

17 JUDGE GILBERT: That's the same audio recording
18 that we're about to hear placed on your laptop?

19 MS. SODERNA: That's correct.

20 JUDGE GILBERT: What the court reporter will do
21 then is state that the recording was then played or
22 something to that effect and will take an exact copy

1 of the transcription as certified by another court
2 reporter and enter that into the record. And I'm
3 just hoping everything turns out to be the same, that
4 what we hear is exactly reflected in this transcript.

5 So, without any further ado.

6 (Whereupon, CUB Cross-Exhibit 8,
7 an audio CD was played.)

8 (Whereupon, the following 9
9 pages is a transcription of CUB
10 Cross-Exhibit 8.)

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF COOK.)

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5 Transcription of a CD Recording of a
6 telephone conversation between a U.S. Energy Savings
7 Corporation customer service representative and
8 Catherine Vargas.

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1 LUIS: Good evening. Thank you for calling
2 customer service. My name is Luis and my personal
3 ID number is 100730. Can I confirm --
4 MR. FRANKLIN GREY: Okay. Luis, how do you
5 spell your name?
6 LUIS: L-u-i-s, Luis.
7 MR. FRANKLIN GREY: Okay. Go ahead.
8 LUIS: Can I confirm you're calling for an
9 English residential FPRC for Illinois?
10 MR. FRANKLIN GREY: Confirm.
11 LUIS: Okay. Are you doing multiple accounts
12 today?
13 MR. FRANKLIN GREY: Just one.
14 LUIS: What is your IC number please?
15 MR. FRANKLIN GREY: 76073.
16 LUIS: And your agent name?
17 MR. FRANKLIN GREY: Franklin Grey.
18 LUIS: Thank you, Mr. Grey.
19 May I have please have the account
20 holder's first name.
21 MR. FRANKLIN GREY: The person's first name is
22 Catherine.

1 LUIS: How do you spell that?

2 MR. FRANKLIN GREY: C-a-t-h-e-r-i-n-e.

3 LUIS: Thank you.

4 And the last name?

5 MR. FRANKLIN GREY: Vargas, V-a-r-g-a-s.

6 LUIS: Okay. Got it. And the phone number for

7 the account?

8 MR. FRANKLIN GREY: The phone number is

9 (773) 772-8459.

10 LUIS: Are you using your cell phone today?

11 MR. FRANKLIN GREY: No.

12 LUIS: And who are we going to be speaking to?

13 MR. FRANKLIN GREY: You will be speaking to

14 Ms. Vargas.

15 LUIS: The account holder?

16 MR. FRANKLIN GREY: Yes.

17 LUIS: What is the utility?

18 MR. FRANKLIN GREY: People's Gas. The account

19 number is 5500004436017.

20 LUIS: Okay. And this is for residential on a

21 term of five years at \$1.09 per therm?

22 MR. FRANKLIN GREY: Correct.

1 LUIS: And did you sell the green energy
2 option?

3 MR. FRANKLIN GREY: No.

4 LUIS: Okay. Thank you, Franklin. May I speak
5 with Ms. Vargas so I may verify the information.

6 MR. FRANKLIN GREY: Okay. Just give me a
7 minute. She's in the kitchen and she'll be right
8 back.

9 LUIS: Okay.

10 MR. FRANKLIN GREY: Hold on.

11 MS. CATHERINE VARGAS: Hello.

12 LUIS: Good evening, Catherine Vargas?

13 MS. CATHERINE VARGAS: Yes.

14 LUIS: My name is Luis from U.S. Energy Savings
15 Corp., an alternative gas supplier.

16 MS. CATHERINE VARGAS: Yes.

17 LUIS: I just need to ask you a couple of
18 questions in order to provide you with a fixed price
19 reservation code for the agreement you just signed.

20 MS. CATHERINE VARGAS: Sure.

21 LUIS: Just to let you know, our call is being
22 recorded for quality purposes. Okay?

1 MS. CATHERINE VARGAS: Yes.

2 LUIS: Will you please provide me with your
3 name.

4 MS. CATHERINE VARGAS: Catherine Vargas.

5 LUIS: And can you please state your People's
6 account number.

7 MS. CATHERINE VARGAS: 5500004436017.

8 LUIS: The name on the account is Catherine
9 Vargas?

10 MS. CATHERINE VARGAS: Correct.

11 LUIS: Is this the best telephone number to
12 reach you at, (773) 772-8459?

13 MS. CATHERINE VARGAS: Correct.

14 LUIS: Ms. Vargas?

15 MS. CATHERINE VARGAS: Yes.

16 LUIS: May I speak to your representative,
17 please.

18 MS. CATHERINE VARGAS: Just a moment.

19 MR. FRANKLIN GREY: Hello.

20 LUIS: Franklin?

21 MR. FRANKLIN GREY: Yes.

22 LUIS: I'm trying to verify the information

1 with the client.

2 MR. FRANKLIN GREY: Yes.

3 LUIS: Am I speaking with her or someone else?

4 MR. FRANKLIN GREY: No, you're speaking with

5 her.

6 LUIS: Okay. Please put her back on the phone.

7 MR. FRANKLIN GREY: You want her back on the

8 phone?

9 LUIS: Yes, please.

10 MR. FRANKLIN GREY: Okay. Just a moment.

11 MS. CATHERINE VARGAS: Yes, hello.

12 LUIS: Now in order to continue the enrollment

13 process for your fixed price agreement at a rate of

14 \$1.09 per therm and for a term of five years, we

15 require your confirmation. And, of course, while the

16 agreement does not promise savings, it does offer you

17 piece of mind, stability and protection against

18 potential future price increases.

19 Can you please confirm your agreement

20 by responding "yes."

21 MS. CATHERINE VARGAS: Yes.

22 LUIS: Perfect. We will continue the

1 enrollment procedures necessary to fix your natural
2 gas rate for the next five years at \$1.09 per therm.
3 You have three business days to cancel without any
4 cost, otherwise in approximately 15 to 90 days you
5 should notice USESC's name and toll free number
6 appear on your gas bill. At that time USESC will be
7 supplying your natural gas at the guaranteed fixed
8 price.

9 While USESC is not affiliated with
10 People's, you will continue to receive one bill from
11 People's and People's will continue to deliver your
12 gas to your home. If for any reason you do not
13 notice USESC's name appearing on your bill after
14 90 days, please give us a call.

15 Thank you for your assistance and for
16 choosing U.S. Energy Savings Corp., as your natural
17 gas supplier. My name is Luis and my customer
18 service ID is 100730. You have yourself a good
19 evening, ma'am, and may I please speak with Franklin
20 Grey your account representative.

21 MS. CATHERINE VARGAS: Thank you.

22 Hold on.

1 MR. FRANKLIN GREY: Yes, hello.

2 LUIS: Yes, Franklin?

3 MR. FRANKLIN GREY: Yes, this is me.

4 LUIS: I verified the information. The fixed

5 price reservation code is CF67293808.

6 MR. FRANKLIN GREY: Okay. Thank you very much,

7 Luis.

8 LUIS: Okay. You're welcome. Have a great

9 day.

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF COOK)

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5 Auhdikiam Carney, says that he is a
6 Certified Shorthand Reporter, in association with
7 Sullivan Reporting Company, and transcribed to the
8 best of his ability a CD recording of a telephone
9 conversation between a U.S. Energy Savings
10 Corporation customer service representative and
11 Catherine Vargas.

12 And, further, he is not connected by blood
13 or marriage with any of the parties to this action,
14 nor is he a relative or employee or attorney or
15 counsel of any of the parties, or financially
16 interested directly or indirectly in the matter in
17 controversy.

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Certified Shorthand Reporter
License No. 084-004658

1 JUDGE GILBERT: Miss Vargas speaks then
2 that's when she says, Thank you, toward the end. Do
3 we need to go through all the rest of it in order to
4 do what you want to do.

5 MS. SODERNA: No, that's fine. I think that's
6 sufficient for our purposes here.

7 BY MS. SODERNA:

8 Q And what I wanted to ask you, were you able
9 to hear that tape okay?

10 A Yes.

11 Q And it fair to say that the one answering
12 the questions did not sound like a woman?

13 A Yes.

14 Q And you acknowledge that Mr. Grey
15 impersonated Miss Vargas there?

16 A We have reasons to believe he did, yes.

17 Q Okay. And you testify that Mr. Grey did
18 not admit to the forgery; correct?

19 A Correct.

20 Q Okay. Is it your understanding of the
21 Company's policy regarding Spanish-speaking customers
22 that non-Spanish-speaking sales agents are allowed to

1 market to non-English speaking customers?

2 A Can you say that again. Non?

3 Q I actually asked it convoluted. I'll ask
4 it in a more clear way.

5 Is it your understanding of the
6 Company's policy that Spanish-speaking customers may
7 be marketed to be non-Spanish-speaking sales agents?

8 A Yes, it was a policy.

9 Q Does the Company maintain data as to which
10 contractors may or may not speak Spanish?

11 A No, not Corporate.

12 Q And while the Company makes
13 Spanish-speaking contracts available to sales
14 contractors to use in their sales efforts, the
15 Company does not mandate that Spanish-speaking
16 customers receive Spanish contracts; is that correct?

17 A We do mandate that.

18 Q Just give me one second.

19 JUDGE GILBERT: Let's go off the record for a
20 moment.

21 (Whereupon, a discussion was had
22 off the record.)

1 JUDGE GILBERT: We're back on.

2 BY MS. SODERNA:

3 Q So let me be clear on what you testified
4 to. Has it always been the Company's policy that
5 Spanish-speaking customers must be marketed to be
6 Spanish-speaking sales agents?

7 A No.

8 Q And when did that policy change?

9 A I don't recall.

10 Q Do you have any ballpark idea?

11 A I don't recall. I have two ideas, but --

12 JUDGE GILBERT: What's the current policy, if I
13 may ask?

14 THE WITNESS: The current policy is that a
15 Spanish-speaking customer is to be solicited by a
16 Spanish-speaking contractor and sign a
17 Spanish-speaking contract and the verification call
18 must be done in Spanish.

19 So the change is that an
20 English-speaking contractor would not go to a
21 Spanish-speaking customer and get the, I guess,
22 Spanish script read -- so the presentation read by

1 the CSR in Spanish over the phone and then get the
2 Spanish contract signed. Right? So that policy
3 isn't -- doesn't exist anymore.

4 Now, it's English contractor, English
5 customer, English contract, English call; and Spanish
6 customer, Spanish contractor, Spanish contract,
7 Spanish call.

8 BY MS. SODERNA:

9 Q But that was not the policy before, but
10 you're not sure when that changed; right?

11 A Right.

12 Q And before this changed, isn't it true that
13 the policy with regard to verifications -- and I
14 think that's what you were just saying, but I just
15 want to be clear. The policy with regard to
16 verifications for Spanish-speaking customers is that
17 it was basically up to the customer to determine
18 whether or not they wanted to choose a
19 Spanish-speaking verification call or an English
20 verification call. Is that the policy?

21 A Not necessarily, no.

22 Q Can you clarify for me what the policy was.

1 A So if an English contractor goes to a
2 Spanish speaking home, for argument's sake, and the
3 customer speaks English but feels more comfortable
4 speaking in Spanish, then the option there is that
5 the customer can get on the phone and have the
6 presentation done over the phone in Spanish --
7 right -- and then sign a Spanish contract -- well,
8 and that's it. So everything is done in Spanish.

9 Another option is that if the customer
10 doesn't understand English -- so they don't
11 understand English, they speak Spanish, the English
12 contractor would do the same thing, which is get the
13 Spanish CSR on the phone to do the verification call
14 and the presentation in Spanish.

15 So one is the customer has a choice.
16 And if they don't understand English, the process is
17 there for them.

18 Q So let me -- I need to understand what you
19 just said because I'm not sure that I do.

20 So an English-speaking contractor --
21 sales contractor can sign up a Spanish-speaking
22 customer but that Spanish-speaking customer would

1 have the presentation reread to them by the
2 verification agent?

3 A Not reread, but the presentation done in
4 Spanish.

5 Q By the verification agent?

6 A By the verification agent. That was the
7 policy that's no longer.

8 Q I see.

9 So now if an English-speaking
10 contractor markets to a Spanish-speaking customer who
11 they deem has insufficient understanding of the
12 English language to understand the product would have
13 to cease their marketing efforts. Is that the
14 current policy?

15 A Correct.

16 Q And that's at the sales agent's discretion,
17 right, in terms of determining whether or not that
18 customer has sufficient English ability to understand
19 the product?

20 A Right.

21 Q And you -- I believe you testified that
22 you're familiar with one of the witnesses in this

1 case, Alex Zermeno. I don't speak Spanish so it's
2 going to be apparent.

3 A Yes.

4 Q And are you familiar with the allegations
5 Mr. Zermeno made against the sales contractor that
6 sold him a U.S. Energy product?

7 A Vaguely. I'm just looking for it.

8 Q We don't have to get into the nitty-gritty
9 about it so much as I would just like to know if
10 you're familiar that the verification call that was
11 recorded and stored for Mr. Zermeno was done in
12 English. Is that your recollection?

13 A I recall that, yes.

14 Q And Mr. Zermeno's contract was in English;
15 is that right?

16 A I recall that, yes.

17 MS. SODERNA: I will spare everyone in the
18 hearing room the labor of hearing Zermeno's
19 verification tape. You're welcome.

20 BY MS. SODERNA:

21 Q But suffice it to say that -- let me ask
22 you this: The verification as we heard on

1 Miss Vargas's verification call is that a typical
2 verification call other than the impersonation? I
3 mean, on the verifier's end the script that the
4 verifier reads, is that typical script of a
5 verification agent?

6 A It's typical. The script's been changed.
7 But the back an forth, I guess you can say, is
8 typical.

9 Q And would you agree that most of the
10 responses that are required by the customer are
11 generally one word answers, "yes" or "no" and --
12 other than providing name and address; would you
13 agree?

14 A At times they provide the account number;
15 but, yes.

16 Q And other than the account number and the
17 name and address, all the other responses that are
18 provided on the verification tape are basically "yes"
19 or "no"; right?

20 A Not all the responses that are provided.
21 If the script is followed and the answers are just
22 for what's asked in the -- from the script, then,

1 yes. But customers do ask questions.

2 Q So in some instances there may be more of a
3 conversation?

4 A Absolutely, yes.

5 Q And you testify that a CCR specialist
6 reviewed Mr. Zermeno's verification tape in
7 evaluating his allegation; is that right?

8 A Right.

9 Q And that determination of the CCR
10 specialist that reviewed his verification tape was
11 that he did not seem to be confused when answering
12 questions in English; right?

13 A Right.

14 MS. SODERNA: That's all I have.

15 JUDGE GILBERT: Okay. Does Staff have cross?

16 MS. LIN: Yes, it shouldn't be that lengthy.
17 Unless I get some real juicy stuff, I don't imagine
18 we would go past 5:00 o'clock.

19 JUDGE GILBERT: All right then. Let's take 5.
20 (Whereupon, a discussion was had
21 off the record.)

22 JUDGE GILBERT: We're back on the record.

1 CROSS-EXAMINATION

2 BY

3 MS. LIN:

4 Q Hi, Miss Findley. My name is Jennifer Lin.

5 I'm here on behalf of Staff. Just a few follow-up

6 questions with regard to Miss Soderna's questions and

7 then a series of questions that I am curious about.

8 (Whereupon, the following

9 proceedings were had of a

10 confidential nature and were

11 had in camera.)

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